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# Monsanto

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September 22, 1995

RECORDATION NO. \_\_\_\_\_ FILED 1424

SEP 27 1995 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

Mr. Vernon A. Williams, Secretary  
Interstate Commerce Commission  
Twelfth and Constitution Avenue, N.W.  
Washington, D.C. 20423

RE: Equipment Leasing Agreements Nos. 2, 5 and 6 dated respectively December 26, 1961, July 1, 1963 and July 27, 1964 (the "Equipment Leases"), between The Commonwealth Plan, Inc., as Lessor and Monsanto Company (formerly known as Monsanto Chemical Company), as Lessee

Dear Ms. Lee:

Enclosed please find for recording, pursuant to the provisions of Title 49, United States Code, Section 11303, one fully executed original and one copy of a Bill of Sale and Contract for Sale of Used Rail Cars dated as of May 1, 1995, by and between The Commonwealth Plan, Inc., as Seller, and Flexsys America L.P., as Buyer, relating to the railroad equipment as more fully described below.

In connection with the recording of the above-referenced document, please note the following information:

- (i) **Name and Address of Seller/Lessor:**  
The Commonwealth Plan, Inc.  
2655 Campus Drive, Suite 2000  
San Mateo, California 94403
- (ii) **Name and Address of Lessee:**  
Monsanto Company (formerly known as Monsanto Chemical Company)  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63167
- (iii) **Name and Address of Buyer:**  
Flexsys America L.P.  
260 Springside Drive  
Akron, Ohio 44333-0444

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- (iv) **General Description of Equipment Covered by Documents:**  
Seventeen (17) tank cars (used) bearing the Identification Marks MCPX 704, 8000, 8001, 10001, 10002, 21021, 21030, 21039, 21051, 21059, 21701, 21702, 21703, 21704, 21707, 21715 and 21716; (See the Bill of Sale for Mechanical Designation of each of the cars).
- (v) **Previous Filings with the Interstate Commerce Commission covering the Equipment:**

DOCUMENT:	RECORDATION DATE:	RECORDATION NUMBER:
Equipment and Leasing Agreement No. 2 dated as December 26, 1961 between The Commonwealth Plan, Inc. and Monsanto Company (formerly known as Monsanto Chemical Company).	January 5, 1962	2120
Equipment and Leasing Agreement No. 5, dated July 1, 1963 between The Commonwealth Plan, Inc. and Monsanto Company (formerly known as Monsanto Chemical Company), as amended.	August 28, 1963	2622
Equipment Leasing Agreement No. 6, dated July 27, 1964 between The Commonwealth Plan, Inc., and Monsanto Company (formerly known as Monsanto Chemical Company), as amended.	August 28, 1963	3038-D

Enclosed is our check in the amount of \$21.00 to record the enclosed Bill of Sale and Contract for Sale of Used Rail Cars. When the release of this document has been completed, please endorse with the relevant recording information the original and the copy of the Bill of Sale and Contract for Sale of Used Rail Cars provided herewith and return them in the enclosed, self-addressed, stamped envelope. This is a full release of lien.

Please feel free to contact me at 314/694-2706 if you have any questions in this matter.

Very truly yours,

MONSANTO COMPANY

*W. D. Lambert*  
William D. Lambert  
Assistant General Counsel

**EXHIBIT A**

**BILL OF SALE AND CONTRACT FOR SALE OF USED RAIL CARS**

This Bill of Sale and Contract for Sale of Used Rail Cars (the "Rail Car Contract") entered into and made effective as of this 1st day of January, 1995, by and between **FLEXSYS AMERICA L.P.** ("Flexsys"), with general offices at 260 Springside Drive, Akron, Ohio 44333-0444, and **THE COMMONWEALTH PLAN, INC.** ("Commonwealth"), having a place of business at 2655 Campus Drive, San Mateo, California 99403.

**W I T N E S S E T H**

WHEREAS, Commonwealth entered into Finance Leasing Agreements (the "Leases") with Monsanto Chemical Company ("Monsanto") dated as of December 26, 1961 (Lease Number 2), July 1, 1963 (Lease Number 5) and July 27, 1964 (Lease Number 6) for the lease of certain rail equipment as more specifically described below (the "Equipment"); and

WHEREAS, Monsanto no longer has need of the Equipment and Flexsys has need of and desires to obtain ownership of the Equipment; and

WHEREAS, Monsanto, Commonwealth and Flexsys desire that Flexsys obtain all right and title to the Equipment; and

WHEREAS, while title to the Equipment has remained in Commonwealth, the Equipment is fully amortized with all economic value in the Equipment now being in Monsanto; and

WHEREAS, Commonwealth has granted to Monsanto a Limited Power of Attorney authorizing Monsanto to negotiate and sell the Equipment and prepare and deliver appropriate sales papers, a copy of which is provided Flexsys contemporaneously with this Contract;

Now therefore in consideration of the premises and of the mutual covenants and obligations hereinafter set forth, the parties hereto agree as follows:

1. Commonwealth hereby sells, assigns, transfers, conveys and delivers to Flexsys, its successors and assigns, and Flexsys hereby purchases and accepts from Commonwealth all of Commonwealth's right, title and interest in and to the following described Equipment:

<u>Quantity</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Identifying Marks</u>
1	10,000 Gallon used Tank Car DOT Class 103W External Coiled and Insulated	T103	MCPX 704
2	8,000 Gallon used Tank Car DOT Class 103W Internal Coiled and Insulated	T102	MCPX 8000 MCPX 8001
2	10,000 Gallon used Tank Cars DOT Class 103W Coiled - Insulated -	T103	MCPX 10001 MCPX 10002
5	21,000 Gallon used Tank Cars DOT Class 111A Non-Coiled but Insulated	T105	MCPX 21021 MCPX 21030 MCPX 21039 MCPX 21051 MCPX 21059
7	21,000 Gallon used Tank Cars DOT Class 105A Non-Coiled but Insulated	T525	MCPX 21701 MCPX 21702 MCPX 21703 MCPX 21704 MCPX 21707 MCPX 21715 MCPX 21716

TO HAVE AND TO HOLD all of the foregoing Equipment unto Flexsys, its successors and assigns, FOREVER.

2. The price of the Equipment sold hereunder is one dollar (\$1.00) and other good and valued consideration, the receipt and sufficiency of which are hereby acknowledged. The above price for the Equipment does not include federal, state or local sales, use, excise or similar taxes or

assessments applicable to the sale of such Equipment. Any such tax or assessment shall be paid by Flexsys, or otherwise reimbursed to Commonwealth if to be paid by Commonwealth.

3. The Equipment is sold "As Is - Where Is" with all faults and defects. Flexsys expressly assumes all risk and responsibility for injury or damage to Flexsys (or its employees or agents), or any person, firm or corporation (or its employees or agents) directly or indirectly which injury or damage arose out of ownership, possession, dismantling, removal, handling or use of the Equipment after the date hereof. Flexsys agrees to indemnify and save Commonwealth and Monsanto, their officers, directors and agents harmless against any and all liabilities, penalties, demands, and claims, causes of action, suits, losses, damages, costs and expenses (including cost of defense, settlement and reasonable attorneys' fees) which any or all of them may hereafter suffer, incur, be responsible for or pay out as a result of bodily injuries (including death) to any person or damage (including loss of use) to any property, which injuries or damage arose or after the date hereof and resulted from (i) the commodities carried in such Equipment after the date hereof, (ii) any defects in such Equipment or (iii) out of ownership, possession, cleaning, repairing, dismantling, removal, handling or use of the Equipment after the date hereof. Upon the request of Monsanto or Commonwealth, Flexsys shall promptly defend any such demand, claim, cause of action or suit against Commonwealth or Monsanto.

The parties acknowledge that Form 88-C-5-1 must be filed with the Association of American Railroads. The Form requires each party to certify that the cars have no basic structural weakness or damage which could cause any unsafe operating condition and currently meet all interchange requirements.

While Monsanto and Commonwealth in good faith believe such AAR certification is accurate, and notwithstanding such certification, the terms and conditions of this Rail Car Contract, vis-a-vis Monsanto-Commonwealth and Flexsys, shall govern in the event of a car failure.

4. Commonwealth warrants that the Equipment when sold hereunder shall be free of all liens and encumbrances, but otherwise ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO THE EQUIPMENT ARE HEREBY DISCLAIMED. IN NO EVENT SHALL COMMONWEALTH NOR MONSANTO BE LIABLE FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES.

IN WITNESS WHEREOF, the parties hereto have caused this Rail Car Contract to be duly executed in duplicate counterparts by their duly authorized representatives on the date first above set forth.

THE COMMONWEALTH PLAN, INC.

By: 

Typed Name: D. A. Samford

Associate Company Counsel  
Monsanto Company, acting for  
and on behalf of the Commonwealth  
Plan, Inc. as its Attorney-in-Fact

FLEXSYS AMERICA L.P.

By: Flexsys America Co.,  
sole general partner

By: 

Typed Name: F. E. Reining

Title: President